IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

RSA.No. 275 of 2007()

AS.142/2004 of DISTRICT COURT,KOZHIKODE
OS.154/2000 of ADDL.M.C.,KOZHIKODE-II

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: APPELLANT/APPELLANT/DEFENDANT

THE CANARA BANK, MUKKOM, P.O. MUKKOM.

BY ADV. SRI.V.B.HARI NARAYANAN
SMT.M.J.RAJASREE

RESPONDENTS: RESPONDENT/PLAINTIFF

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1. N.P.ABDUL HAMEED, S/O.ABOOBACKER HAJI,
AGED 35 YEARS, KAKKAD AMSOM KARISSERY DESOM,
KOZHIKODE TALUK.

2. THE CANARA BANK,
REP. BY ITS ZONAL MANAGER,
KOZHIKODE.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 11/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.599/2007 IN R.S.A.No.275/2007

11.6.07 DISMISSED SD/- M.Sasidharan Nambiar
Judge

/true copy/

P.S to Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 275 OF 2007

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Dated this the 11th day of June, 2007

JUDGMENT

Second defendant in O.S.154/2000 on the file of Munsiff Court, Kozhikode is the appellant. First respondent is the plaintiff and second respondent the second defendant in the suit. First respondent was admittedly maintaining N.R.E account, Account No.20385/SAS with the appellant bank. Ext.B5 series of cheques were encashed from that account and Rs.33,000/- was debited into the account of the first respondent. Contending that first respondent has not authorised to withdraw the said amount and the said amounts were withdrawn by encashing forged cheques by his friend Abdul Nazir, first respondent sent Ext.A3 notice demanding the repayment of the said amount. On the failure of the defendants to pay the amount, the suit was instituted contending that withdrawal of the amount from the account was unauthorised.

Appellant filed a written statement admitting the withdrawal of the amount under Ext.B5 series of cheques. It was contended that the cheques were not forged and the appellant acted with due care and prudence expected of the banker. It was contended that on 9.9.1999 Rs.97,500/- was withdrawn by first respondent and the cash balance was only Rs.297/- and while so, appellant received Ext.A2 intimation from first respondent on 13.9.1999 that the cheque leaves were taken away by Abdul Nazir. On 14.9.1999 at 11 a.m a person presented before the appellant, cheque No.404400 for Rs.22,000/- signed by first respondent, which was a cheque referred by the first respondent in Ext.A2 letter and thereupon appellant lodged a complaint to Mukkom Police and Police identified that person as Abdul Nazir and a case was registered against him for cheating. It was contended that as appellant had taken all reasonable care and prudence before the cheques were debited and first respondent is not entitled

to the decree sought for. Learned Munsiff after framing the necessary issues and recording the evidence of PW1 and Dws. 1 and 2 and Exts.A1 to A7 and Exts.B1 to B6 found that Ext.B5 series of cheques were encashed by the appellant without taking care and caution expected of a banker and the cheques were not signed by the first respondent and appellant was not authorised to give the amount under those cheques and therefore granted a decree directing the defendants to pay Rs.34,570/- with interest at 12% on the principal amount of Rs.33,000/- to first respondent. Second defendant challenged the decree and judgment before District Court, Kozhikode. Learned District Judge elaborately considered the appeal and on reappreciation of evidence findings of the trial court was confirmed and the appeal was dismissed. It is challenged in the Second Appeal.

2. Learned counsel appearing for the appellant was heard.

3. The arguments of the learned counsel

appearing for appellant was that no acceptable evidence was adduced before the courts below to prove that Ext.B5 series of cheques are forged cheques or the signatures therein are not that of first respondent and they were not sent to an expert and in such circumstance, courts below should not have found that Ext.B5 series cheques are forged cheques. It was also argued that courts below on the evidence should have found that as a prudent banker appellant had taken all care and caution expected and in such circumstance, the decree granted is unsustainable.

4. On hearing the learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal.

5. When a cheque purporting to be signed by an account holder is presented before the Bank, it carries a mandate to the bank to pay the amount covered by the cheque. If the cheque is not issued by the account holder or is a forged cheque, it cannot be said that the mandate enables the banker

to encash the cheque or pay the amount from his account. The bank is definitely entitled to get the protection, provided it established that before encashing the cheque due care and caution as expected of a banker was shown. Learned Munsiff and the learned District Judge appreciated the facts of the case in the light of the settled legal position laid by the Apex Court in **Canara Bank v. Canara Sales Corporation (AIR 1987 SC 1603).** The courts below found that the signature in Ext.B5 series of cheques do not tally even among themselves. The courts below also found that the signature in Ext.B5 series do not tally with the signatures in Exts.B1 to B4 series, which contain the admitted signature of the first respondent. Courts below on the evidence also found that Ext.B5 series of cheques were produced by the appellant themselves and it contains an endorsement made by the handwriting expert establishing that they were sent to an expert to compare the signature seen

therein with the disputed signature. First respondent filed I.A.3565/2003 for a direction to the appellant to produce the report of the handwriting expert regarding the disputed signatures. The courts below found that appellant did not produce the report and evaded production of the report saying that the report is not traceable. In the light of that explanation, courts below were justified in holding that the case of the appellant was not that there was no report but the report is not traceable. In the light of the said evidence, courts below found that the failure to send the reports to an expert is not fatal and the court is competent to compare the signature as provided in Section 73 of the Indian Evidence Act and a comparison of the signatures establish that the signature in Ext.B5 series are not that of the first respondent and they are forged cheques.

6. Then the only question is whether the appellant had taken due care and caution expected of the banker before encashing the cheque. When

courts below on a perusal of Ext.B5 series of cheques with the signature seen in Ext.B1 to B4 series found that the signature do not tally, it need no further explanation to hold that due care and caution as expected of the banker was not taken before encashing the cheque. The courts below also found that though DW1 deposed that he had verified the cheques his evidence is not credible. DW1 himself admitted that as per the instructions issued by the Bank a cheque presented in N.R.E. account could be passed only after it is verified by the Special Assistant or Officers above DW1, the Branch Manager. The courts below also found that as per the evidence, Ext.B5 series of cheques were verified by Komalam S. Nair and Jose Thondiyil. Neither of them were examined. In the light of this evidence, courts below found that appellant failed to establish that due care and prudence as expected of a banker was taken before encashing Ext.B5 series of cheques. In the light of the said findings, it was found that the

appellant is liable to pay the amount unauthorisedly debited from the account of the first respondent. I find no substantial question of law involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006